



Entered on Docket
October 31, 2007

A handwritten signature in dark ink, appearing to read "Linda B. Riegle".

Hon. Linda B. Riegle
United States Bankruptcy Judge

LEWIS AND ROCA LLP

3993 Howard Hughes Parkway, Suite 600
Las Vegas, NV 89169-5996
Facsimile (702) 949-8321
Telephone (702) 949-8320

Susan M. Freeman AZ State Bar No. 004199
Email: sfreeman@lrlaw.com
Rob Charles NV State Bar No. 006593
Email: rcharles@lrlaw.com
John Hinderaker AZ State Bar No. 018024
Email: jhinderaker@lrlaw.com

Attorneys for USACM Liquidating Trust

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA**

In re:

USA COMMERCIAL MORTGAGE
COMPANY,

USA CAPITAL REALTY ADVISORS,
LLC,

USA CAPITAL DIVERSIFIED TRUST
DEED FUND, LLC,

USA CAPITAL FIRST TRUST DEED
FUND, LLC,

USA SECURITIES, LLC,

Debtors.

Case No. BK-S-06-10725-LBR
Case No. BK-S-06-10726-LBR
Case No. BK-S-06-10727-LBR
Case No. BK-S-06-10728-LBR
Case No. BK-S-06-10729-LBR

CHAPTER 11

Jointly Administered Under Case No.
BK-S-06-10725 LBR

Date of Hearing: October 15, 2007
Time of Hearing: 9:30 a.m.

Affects:

- ☐ All Debtors
- ☒ USA Commercial Mortgage Company
- ☐ USA Capital Realty Advisors, LLC
- ☐ USA Capital Diversified Trust Deed Fund, LLC
- ☐ USA Capital First Trust Deed Fund, LLC
- ☐ USA Securities, LLC

**ORDER SUSTAINING THE USACM LIQUIDATING TRUST'S OBJECTION TO
CLAIM NO(S). 10725-02555 AND 10725-02561 FILED BY EVERETT H.
JOHNSTON FAMILY TRUST, DTD 1/24/90 AS IMPROPERLY ASSERTING
SECURED STATUS**

Everett H. Johnston Family Trust, dtd 1/24/90 filed Proof of Claim No(s). 10725-02555 and 10725-02561, which asserted a secured claim(s) against USA Commercial Mortgage Company ("USACM").

The USACM Liquidating Trust (the "USACM Trust") filed its an Objection [DE 4266] (the "Objection"), which challenged Everett H. Johnston Family Trust, dtd 1/24/90's assertion of secured status and sought to have the Court reclassify Everett H. Johnston Family Trust, dtd 1/24/90's claim(s) as a general unsecured claim(s).

Simultaneously with the Objection, the USACM Trust filed its Motion for Summary Judgment Regarding (1) Responses to the USACM Trust's First Through Thirty-Third Omnibus Objections to Claims Asserting a Secured Status; (2) Responses to USACM Trust's First through Third Omnibus Objections to Claims Asserting a Priority Status; and (3) Newly Alleged Secured and Priority Claims (the "Motion") [DE 4291]. The Motion sought summary judgment on the Objection and asked that the Court sustain the Objection.

Appropriate notice of the Objection and the Motion was given to Everett H. Johnston Family Trust, dtd 1/24/90.

Everett H. Johnston Family Trust, dtd 1/24/90 did not respond to the Objection or the Motion.

At a hearing on October 15, 2007, the Objection and the Motion came before the Court. Everett H. Johnston Family Trust, dtd 1/24/90 did not appear at the hearing to contest the Objection or the Motion.

Based upon the foregoing and good cause appearing,

IT IS HEREBY ORDERED:

1 1. Granting the Motion [DE 4291] as it relates to Proof of Claim No(s). 10725-
2 02555 and 10725-02561 filed by Everett H. Johnston Family Trust, dtd 1/24/90;

3 2. Sustaining the Objection [DE 4266]; and

4 3. Reclassifying Proof of Claim No(s). 10725-02555 and 10725-02561 filed by
5 Everett H. Johnston Family Trust, dtd 1/24/90 as a general unsecured claim(s) subject to
6 further objection by the USACM Liquidating Trust.

7 # # #

8 PREPARED AND SUBMITTED:

9 **LEWIS AND ROCA LLP**

10 By: /s/ RC (#0006593)
11 Susan M. Freeman (pro hac vice)
12 Rob Charles
13 John Hinderaker (pro hac vice)
14 *Attorneys for USACM Liquidating Trust*

CERTIFICATION OF COUNSEL PURSUANT TO LOCAL RULE 9021

In accordance with Local Rule 9021, the undersigned certifies:

- ☐ The Court waived the requirements of LR 9021.
- ☐ I have delivered a copy of this proposed order to all counsel who appeared at the hearing, any unrepresented parties who appeared at the hearing, and any trustee appointed in this case, and each has approved or disapproved the order, or failed to respond, as indicated below:
 - ☐ approved the form of this order;
 - ☐ waived the right to review the order;
 - ☐ failed to file and serve papers in accordance with LR 9021(c); and/or
 - ☐ failed to sign and return this proposed order within five (5) business days in accordance with LR 9021(b).
- ☐ I have delivered a copy of this proposed order to all attorneys and unrepresented parties who appeared at the hearing regarding this matter and/or who filed a written objection and all have either approved the form of this order, waived the right to review the order, failed to file and serve papers in accordance with LR 9021(c) and the following have disapproved the form of the order.
- ☒ No opposition was filed and no other party or counsel appeared at the hearing.

LEWIS AND ROCA LLP

By: /s/ RC (#0006593)
Susan M. Freeman
Rob Charles
Attorneys for USACM Liquidating Trust